UNITED
NATIONS

CCPR

International covenant
on civil and
political rights

Distr.
GENERAL

CCPR/C/SR.1509
9 August 1996

ENGLISH
Original: FRENCH

HUMAN RIGHTS COMMITTEE

Fifty-seventh session

SUMMARY RECORD OF THE 1509th MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 11 July 1996, at 3 p.m.

Chairman: Mr. AGUILAR URBINA

later: Mr. BÁN

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GE.96-17276 (E)

The meeting was called to order at 3.05 p.m.

GENERAL COMMENTS OF THE COMMITTEE (agenda item 5)

Consideration of draft general comment on article 25 of the Covenant (CCPR/C/56/CRP.1) (continued)

1. The CHAIRMAN noted that the Committee had continued its consideration of the draft at its fifty-sixth session and had adopted paragraphs 1-20, with some amendments which did not appear in the document (CCPR/C/56/CRP.1) which the members had before them. He invited Ms. Evatt, Rapporteur for the draft general comment, to point out the changes to be made in the rest of the draft, paragraph by paragraph.

Paragraph 21

2. Ms. EVATT said there were two changes to be made in the text of paragraph 21. In the second sentence, the order of the three adjectives should be the one followed elsewhere in the text: "objective, reasonable and non-discriminatory". Furthermore, the last sentence should be deleted and the penultimate sentence should be expanded to read: "It is of particular importance to ensure that persons holding public service positions do not suffer discrimination on the ground of their political opinions or by the imposition of unreasonable or irrelevant qualifications."

3. Mr. Bán took the Chair.

4. Mr. BRUNI CELLI said he had some reservations with regard to the use of the word "reasonable" to qualify "criteria"; the word was too general and vague and might lend itself to subjective interpretations.

5. Mrs. CHANET said she shared Mr. Bruni Celli's concern; the criteria should be better defined and, in any case, it was important to emphasize non-discrimination by listing all the grounds for discrimination mentioned in articles 2 and 26 of the Covenant. In that regard, she was surprised to note that the only basis for discrimination mentioned in paragraph 21 was "political opinions". Everyone knew that there were many other reasons for which individuals were prevented from holding public service positions. Finally, with regard to "reasonable affirmative measures", in addition to the already-mentioned problem of the reasonable nature of such measures, it was difficult to see what was meant; again, clarification was needed.

6. Mr. ANDO suggested shortening the second sentence of the paragraph to read: "... the criteria and processes for appointment, promotion, etc.". In the following sentence, the adjective "reasonable" ("reasonable affirmative measures") should be deleted. However, unlike other members of the Committee, he felt that the adjectives "objective" and "non-discriminatory" did not convey the same idea as the adjective "reasonable". For example, a country which set the minimum age for election to the Senate at 80 or 90 would not be imposing a non-objective or discriminatory criterion, but every member of the Committee would agree that the criterion was unreasonable. There was, therefore, a shade of meaning to be preserved.

7. Ms. MEDINA QUIROGA said she understood the objections to the adjective "reasonable" but feared that the Committee had no choice since it was impossible, in any general comment, to define the permissible restrictions without placing oneself in a dangerous position. The only alternative would be to give examples but, there again, it would be easy for States parties to claim to the Committee that the restrictions they were imposing were not among the examples given.

8. Lord COLVILLE pointed out that in paragraphs 3, 13 and 14 of the draft general comment, the Committee had not hesitated to give examples. If, then, it opted for a more general wording in paragraph 21, it ought, perhaps, to find a way of somehow indicating to the reader why it had decided not to give any examples.

9. Mr. EL SHAFEI said that, personally, he preferred the last two sentences of paragraph 21 in their original form. Combining them resulted in the word "qualifications" applying to the situation of a person already in public service, whereas it normally applied to the period prior to appointment. A way must be found not to confuse those two stages.

10. Furthermore, the wording of the fourth sentence of paragraph 21 ("Basing public service on ... political interference or pressures") was such as to seem to apply to public service itself, whereas article 25 (c) referred to persons appointed to a public service post. There, again, a way must be found to show that it was the occupant of the post who must be protected through the application of the principles of merit, equal opportunity and secure tenure.

11. Finally, he fully agreed with Mrs. Chanet's suggestion to list all the grounds for discrimination mentioned in the Covenant.

12. Mr. BHAGWATI agreed with Mr. El Shafei that it was better to avoid using the word "qualifications" in the context of a person already holding a post. He also approved of Mrs. Chanet's suggestion regarding grounds for discrimination. He was against the idea of giving examples, which were necessarily limiting. A reference to "reasonable" and "objective" criteria was entirely justified; one could even add "non-arbitrary". It was important to specify in the text that the reference to criteria in the fourth sentence referred to access to public service. Finally, he agreed with the amendment to the last sentence suggested by Ms. Evatt, provided it was clear that the qualifications must be relevant to the position.

13. Mr. BUERGENTHAL said he thought that the third sentence would in no way suffer from the deletion of the adjective "reasonable". He suggested rewording that sentence to read: "Reasonable affirmative measures ... to ensure that all citizens have equal access to public service".

14. Mr. KLEIN said he was in favour of deleting the adjective "reasonable" before "affirmative measures" and concurred with Mr. El Shafei that protection must be provided to those holding public service positions, not to public service itself. Finally, he fully agreed with Mrs. Chanet's suggestion to list all the grounds for discrimination mentioned in article 2 of the Covenant.

15. Ms. MEDINA QUIROGA suggested eliminating the reference to "the ground of their political opinions" from the penultimate sentence and stating that there must be no discrimination against persons holding public service positions "in the exercise of the rights set forth in article 25 (c)" of the Covenant. It must also be emphasized that any required qualification or skill must be directly related to the position applied for.

16. Mr. FRANCIS suggested mentioning the judicial authorities among the examples given in the first sentence in order to take into account all national situations.

17. Mr. KRETZMER noted that it was a question of access "to public service positions", not to public service; the words thus included anyone with public responsibilities. He pointed out that, while access to positions in the judiciary was, in fact, covered under article 25 of the Covenant, the expression "such as" in the first sentence made it clear that the Committee was only giving examples. For those reasons, he preferred to leave the first sentence as it stood.

18. Mrs. CHANET said that, on the contrary, the examples given in the first sentence could be deleted since the list was so long that it might appear to be exhaustive and to exclude other posts.

19. Ms. EVATT read out a new version of paragraph 21, which reflected the substantive proposals and minor drafting suggestions made by the members of the Committee. The new paragraph 21 would read: "Subparagraph (c) deals with the right and the opportunity of citizens to have access on general terms of equality to public service positions. To ensure access on general terms of equality, the criteria and the processes for appointment, promotion, suspension and dismissal must be objective and reasonable. Affirmative measures may be taken in appropriate cases to ensure that there is equal access to public service for all citizens. Basing access to public service on equal opportunity and general principles of merit, and providing secure tenure, ensure that persons holding public service positions are free from political interference or pressures. It is of particular importance to ensure that persons do not suffer discrimination in the exercise of their rights under article 25 (c) on any of the grounds set out in article 2 (1) of the Covenant. For example, the qualifications for a public service position must be relevant to that position."

20. Paragraph 21, as amended by Ms. Evatt, was adopted.

Paragraph 22

21. Ms. EVATT said it was her understanding that some members of the Committee questioned the need to retain that paragraph in the general comment. In her opinion, however, its presence was justified by the fact that it emphasized that States parties must set up judicial or other review mechanisms which applied to the processes mentioned.

22. Mr. BRUNI CELLI said that paragraph 22 was absolutely necessary.

23. However, the Spanish version of the expression "affirmative measures" was not satisfactory and must be reviewed.

24. Ms. MEDINA QUIROGA, Mr. ANDO, Mr. BHAGWATI, Mr. EL SHAFEI and Mr. KLEIN agreed that paragraph 22 should be retained.

25. Lord COLVILLE suggested that, since the first sentence of the new version of paragraph 21 ended with the words "to public service positions", the first sentence of paragraph 22 might be altered to refer to conditions for access "to public service positions".

26. The CHAIRMAN said he took it that the Committee wished to adopt paragraph 22 with the amendment requested by Lord Colville and on the condition that the Spanish version should be reworded.

27. It was so agreed.

28. Paragraph 22, as amended, was adopted.

29. Mr. Aguilar Urbina resumed the Chair.

Paragraph 23

30. Mr. BRUNI CELLI said he wondered whether the Committee should not include in paragraph 23 a reference to the rights set forth in article 19 of the Covenant, concerning freedom of expression. It seemed to him that States parties should be encouraged to read article 25 of the Covenant in conjunction with article 19.

31. Mr. EL SHAFEI said that the words "to criticize government, to be political opponents, ..." seemed superfluous and should be deleted. It would be enough to state that article 25 of the Covenant guaranteed the freedom to hold peaceful demonstrations and meetings.

32. Mr. BUERGENTHAL said that he, too, was in favour of including a reference to article 19 of the Covenant in paragraph 23 of the draft. It might also be useful to mention articles 21 and 22 of the Covenant in order to avoid any ambiguity in the interpretation of the provisions of article 25.

33. Mr. KLEIN said he was opposed to deleting the references to the freedom to criticize government and to be a political opponent because he thought that that point was important to States parties' interpretation of the rights guaranteed by article 25 of the Covenant.

34. Ms. MEDINA QUIROGA said that paragraph 23 of the draft should be adopted in its current form since it sent a very clear message to States parties regarding the attitude to be taken towards violations of the rights set forth in article 25 of the Covenant.

35. Mr. BHAGWATI and Mr. FRANCIS agreed with Ms. Medina Quiroga.

36. Ms. EVATT suggested that, in order to address the concerns of the members of the Committee, a phrase should be added to paragraph 23 to the effect that the protection of the rights set forth in article 25 of the Covenant also entailed the full exercise of, and full respect for, the rights protected by articles 19, 21 and 22 of the Covenant.

37. The CHAIRMAN said that, if there was no objection, he would take it that the Committee wished to adopt paragraph 23 of the draft general comment as amended by Ms. Evatt.

38. It was so agreed.

Paragraph 24

39. Lord COLVILLE said he saw no need to include in the first sentence the words "including lobby groups or associations to promote their interests and opinions" since that category seemed to be included in "organizations and associations concerned with political and public affairs", which immediately preceded that reference.

40. Mr. MAVROMMATIS and Mr. FRANCIS said they shared that opinion.

41. Mr. KLEIN said he wondered whether paragraph 24 was superfluous since paragraph 23 had already mentioned participation in public affairs and elections through political parties and other organizations.

42. Mr. BUERGENTHAL said that the reference to lobby groups could be deleted; he shared Mr. Klein's doubts regarding the usefulness of paragraph 24.

43. Mr. ANDO said that the last sentence of paragraph 24 was not very clear and that political parties themselves were responsible for ensuring respect for article 25 of the Covenant. He asked for an explanation of that sentence.

44. Ms. MEDINA QUIROGA agreed with the suggestion to eliminate the reference to lobby groups.

45. Mr. BRUNI CELLI said that the last sentence of paragraph 24 had been added at his suggestion: the point was to require States parties to ensure that political parties did not become oligarchies, as was the case in many countries, and that they respected the basic principles of democracy in their internal management. He felt that that point was a very important one.

46. Mr. KRETZMER said he was afraid it might not be possible to set rules for 132 States parties on the basis of what occurred in some countries. He found both the first and second parts of the last sentence in paragraph 24 problematic. In the first place, he did not want to encourage States to interfere in the internal affairs of political parties and, in the second, it was not for the Committee to give an opinion in the ongoing debate as to whether democracies should limit the activities of undemocratic political groups, a question on which opinions were extremely divided. The best solution would be to delete the last sentence of paragraph 24.

47. Mr. EL SHAFEI said that he, too, feared State interference in the internal affairs of political parties and suggested retaining only the first part of the sentence, ending with the words "political parties respect the principles [not principle] of article 25 in their internal management". Moreover, he wondered whether it was not the courts, rather than the State, which were responsible for ensuring respect for those principles.

48. Ms. EVATT confirmed that the last sentence had been included in paragraph 24 in order to reflect the concern expressed by Mr. Bruni Celli from the beginning of the work of the Working Group responsible for preparing the draft general comment. While there was no real objection to the idea that political parties must respect the principles of article 25 of the Covenant, there were problems in indicating that States were responsible for ensuring that parties respected those principles and in seeking to specify the methods to be used. That being the case, she wondered whether it would not be better simply to state that "political parties must respect the principles of article 25".

49. Mr. BRUNI CELLI said that the word "velar" might be too strong to express his concern, which was that it was for the State, within the framework of the law and through the intermediary of the Executive or the judiciary, to require political parties, in their internal management, not to depart from the norms which they otherwise respected in the democratic process governing society in general. As mechanisms for participation in political and public affairs, common-interest organizations and instruments for introducing the population to the rules of the political system, political parties played too important a role for it not to be ensured that the candidates chosen within those parties as candidates for elections, presidential or otherwise, were not simply coopted by an oligarchy, sometimes in a fraudulent manner which falsified the democratic process.

50. Mr. BHAGWATI said that he shared Mr. Bruni Celli's opinion with regard to the last sentence of paragraph 24 and that he would prefer to retain the reference to lobby groups in the first sentence, since those groups played an essential role in ensuring the widest possible participation in public affairs.

51. Mr. BÁN said he did not share the misgivings of the previous speakers and noted that, in ensuring respect for the principles of the Covenant, States could have recourse not only to the organs of the Executive Power but also to those of the judiciary and legislative branches. However, in view of the risk of differing interpretations that might lead to an arbitrariness to which the last sentence of paragraph 24 could give rise, he was willing to agree to its rewording or deletion.

52. Mr. BUERGENTHAL said that he would prefer to eliminate the last sentence of paragraph 24. However, if there was no consensus on the matter, he would be in favour of the amendment suggested by Ms. Evatt or of wording along the following lines: "in their internal management, political parties must respect the applicable principles of article 25"; he was against the idea of mentioning the responsibility of States in that matter.

53. Mr. FRANCIS said he agreed with Mr. Bruni Celli's statement regarding the last sentence of paragraph 24 but would agree to shortening the sentence as suggested by Ms. Evatt if that was the majority view.

54. Mr. KLEIN said he fully understood the points made by Mr. Bruni Celli; moreover, article 21 of the Constitution of his own country, Germany, expressly stated that the internal management of political parties must be based on democratic principles. If he had reservations regarding the last sentence of paragraph 24, it was because, in his opinion, by setting forth a general rule for the functioning of political parties, the Committee was moving away from article 25 of the Covenant. For that reason, he was wholly in favour of deleting the last sentence, and even all of paragraph 24, which dealt with a subject already covered in paragraph 23.

55. Ms. MEDINA QUIROGA supported Mr. Bruni Celli's position and suggested that, in order to limit the risk of misunderstanding, the text should be amended to state that "States have a responsibility to ensure, through appropriate legislation, that political parties respect the principles of article 25". In her opinion, article 25 of the Covenant was meaningless if political parties themselves were not democratic.

56. The CHAIRMAN, speaking in his personal capacity, said he agreed with Mr. Bruni Celli. He, too, felt that, in order to carry out their role, which included appointing candidates to represent the population in the electoral process, political parties must respect the provisions of article 25 and function democratically. He gave the example of a Latin American country, considered to be the oldest democracy in the region, where only three families had produced 46 of the country's 50 Presidents. The hold of oligarchies over political parties was all the more serious because of the ever-increasing gap between socio-economic groups. There were countries where political parties were in the hands of those who, possessing considerable financial resources, agreed among themselves on the choice of a candidate who would be sure to be elected because any others would have been discarded. The results of the elections were virtually known in advance.

57. Mr. KRETZMER suggested that the following wording for the last sentence of paragraph 24 might meet with general agreement: "Therefore, where necessary, appropriate measures should be taken to ensure that political parties respect ..."; the rest of the sentence would be unchanged.

58. The CHAIRMAN invited the members of the Committee to continue and complete their consideration of the draft general comment at the following meeting.

The meeting rose at 6.05 p.m.